

MAR 27 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAIME RODRIGUEZ,

Defendant - Appellant.

No. 08-50195

D.C. No. 2:08-cr-00006-ODW

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Otis D. Wright, District Judge, Presiding

Submitted March 18, 2009^{**}

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Jaime Rodriguez appeals from the 51-month sentence imposed following his guilty-plea conviction for illegal re-entry after deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

remand to correct the judgment.

Rodriguez contends that his sentence must be vacated and remanded for re-sentencing due to the district court's technical violation of Federal Rule of Criminal Procedure 32(e)(2). We conclude that the error did not affect his substantial rights. *See United States v. Olano*, 507 U.S. 725, 734 (1993).

We remand to the district court with directions to delete from the judgment of conviction the incorrect reference to 8 U.S.C. § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED to correct the judgment.